

March 16, 2022

VIA IZIS

D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street, N.W., Suite 200S
Washington, DC 20001

Re: **BZA Application No. 20643 – Post-Hearing Submission of The Maret School (“Applicant”)**

Dear Members of the Board:

During the March 9, 2022, Public Hearing in this case members of the Board requested the following information from the Applicant: Response to the March 8, 2022 letter from the Office of the Attorney General (OAG) – including the Zoning Administrator’s e-mail confirmation of the appropriateness of the requested special exception relief and the DC Court of Appeals opinion regarding BZA Application No. 16433; information regarding Maret’s relationship with Moseley Field in NE; a summary of the concessions and proposals made to the application in response to community feedback; an updated Memorandum of Understanding (MOU) with ANC 3/4G – which includes a discussion about the ongoing relationship between Maret and ANC 3/4G after construction of the athletic facilities are completed; and the status of discussions with the owner of the property located at 5931 Utah Avenue, NW.

The Applicant hereby provides the following responses and information to the requests of the Board.

Response to OAG Letter Dated March 8, 2022 and Appropriateness of the Special Exception Relief Requested for Private School Use

The Applicant has reviewed OAG’s letter in detail and does not agree with its analysis, conclusions or recommendations.

As a preliminary matter, the Applicant restates and incorporates into this Submission (a) the information that was included in the Statement of the Applicant (Exhibit 17 of the record) and (b) the discussion of “Appropriateness of the Special Exception Relief Requested for Private

School Use” in the Applicant’s Response to Motion to Postpone (dated February 22, 2022; Ex. 203).¹

1. As noted in testimony at the Public Hearing on March 9, 2022, the Zoning Administrator has confirmed via e-mail that (a) the proposed Athletic Facilities meet the definition of the use “Education, Private” and (b) the appropriate relief for this use would be a special exception. The correspondence is attached to this Submission as Exhibit A.

2. In its letter dated March 8, 2022 (Ex. 268), OAG asserts that “[t]he Off-Campus Athletic Facility does not qualify as a ‘private school’ principal use eligible for a special exception in the R-1-B zone because the Off-Campus Athletic Facility is not located on the same premises as the Maret School’s campus as required by Subtitle B § 203.3.” In essence, OAG first seems to have created its own analytical framework in which the “‘private school’ principal use” consists of some (not defined) set of facilities and/or activities. Then it concludes that athletic facilities, and the activities taking place there, are not included in the set.

Nothing in the Zoning Regulations supports this assertion. In fact, the plain language of Subtitle B §203.3 “Education, Private” stands for precisely the opposite. This definition explicitly contemplates that “[private school] uses may include, but are not limited to...**sports facilities.**” (**Emphasis added.**) In that same definition, another included use is described as “accessory play and athletic areas.” It is important to note that the only function of the word “accessory” in this entire definition is to modify “play and athletic areas.” The word “accessory” only could modify other parts of the definition – such as “sports facilities” – if a colon appeared after it. However, the sole colon in this paragraph appears before the word “accessory,” thereby limiting its applicability to just those words found within the same clause (*i.e.*, the words “play and athletic areas”).

3. It should be noted that this Board’s ruling in another case explicitly contradicts OAG’s assertion by establishing a precedent that remains undisturbed to this day. In BZA Application No. 16433, National Cathedral School (NCS) sought a special exception “to allow the construction of a girls’ athletic facility at a private school in an R-1-B District.” The Board wrote that the “use must be characterized as either principal or accessory” and noted “[t]he opposition argues that the proposed athletic facility is neither and that a use variance is required.” The Board rejected this argument, stating:

The Board concludes that the athletic facility is an extension of the principal use. **Athletics is a form of education, and thus the athletic facilities are educational facilities.** It, therefore, follows that the applicant need only meet the standard for a private school special exception. (BZA Order No. 16433 at p. 8; **emphasis added.**)

¹ In response to the question of Board Member Smith, there is no definition of private school in either the 1958 or 2016 Zoning Regulations.

The Board's approval of the NCS application was appealed, but the DC Court of Appeals (in Case No. 99-AA-1230) upheld the approval on other grounds – and the Court did not address the ruling of the Board that “athletic facilities are educational facilities.” Thus, the ruling in BZA Application No. 16433 remains good precedent, upon which Maret appropriately relied in filing the present application. As requested by the Board, the DC Court of Appeals Decision in Case No. 99-AA-1230 is attached to this Submission as Exhibit B.

4. OAG's assertion contradicts the undisputed factual record in this case that convincingly establishes why the proposed Athletic Facilities are, in fact, educational facilities – no matter how close to, or far from, Maret's Woodley Park campus they are located.

In the Statement of the Applicant (Ex. 17), Maret wrote the following:

The proposed Athletic Facilities are sports facilities that are an integral component of Maret's educational and academic instruction and mission. Maret students that participate on varsity athletics teams satisfy a portion of their physical education requirement that is necessary to graduate. (Pages 8-9, emphasis added.)

At the March 9, 2022, hearing, Maret's Head of School, Marjo Talbott, fleshed out this key point in her testimony, stating that:

- These facilities are critically important to our *School's Mission*. In fact, athletics is one of the four essential pillars – along with academics, arts and wellness – that define Maret's educational program.
- True to our Mission, Maret is one of the few independent schools in the DC area that require every student, every year, to participate in some form of physical education. In our Middle and Upper School, our students participate in interscholastic sports, building the physical, emotional and cognitive skills that enable them to become effective team players. It is a requirement for graduation, and many of our alumni attend colleges where their Maret athletic accomplishments helped them in their admission application process.
- Our coaches are an essential part of our faculty, and they teach important skills that transcend athletic competition and last a lifetime. They emphasize our core values that include fair play, self-discipline and cooperation at every grade level. (Testimony of Marjo Talbott – BZA Public Hearing on March 9, 2022².)

² The transcript of this public hearing is not yet available.

The Board has every right to (a) accept as a matter of proven fact that the proposed Athletic Facilities are educational facilities and (b) conclude that, per established precedent, the Applicant need only meet the standards for a private school special exception.

5. OAG asserts that the lack of any “on-site academic instructional element to which the proposed athletic uses will be accessory” prevents the proposed Athletic Facilities from being considered for a special exception as a private school use. This assertion highlights a key fallacy in OAG’s argument, which assumes that “athletic uses” must always be, and be nothing other than, “accessory” to a “‘private school’ principal use.” In fact, every time that Maret students practice or compete on these fields, they will – as the current record amply demonstrates – be engaged in an essential aspect of their Maret education. Maret students learn about the Spanish language, trigonometry, or chemistry in classrooms operated by the School. Similarly, Maret students learn physical fitness, acquire athletic proficiency, and develop the character traits of sportsmanship, teamwork, and perseverance on playing fields operated by the School. Just as a Maret student needs to accumulate a certain number of credits in the classroom to earn a diploma, that student must also meet certain minimum standards of participation in physical fitness and athletics to graduate.

6. Combining the plain meaning of the Zoning Regulations with the undisputed factual record, it is clear that the proposed Athletic Facilities are in fact educational facilities and constitute “[a]n educational, academic, or institutional use with the primary mission of providing education and academic instruction.” Because the Athletic Facilities are consistent with this use definition for “Education, Private” in Subtitle B, §200.2, the only issue associated with their distance from Maret’s existing Woodley Park campus is transportation-related impacts.

As required by the special exception standards, the Applicant has demonstrated that the need to transport students to and from the Athletic Facilities will not create objectionable impacts. This is because any transportation-related impacts will be effectively mitigated through implementation of the Applicant’s Transportation Demand Management plan, which is strengthened by additional conditions proposed by DDOT – all of which Maret has agreed to. This is fully evidenced in the record and confirmed both by DDOT’s report (Ex. 222) and by the testimony of DDOT’s representative at the public hearing on March 9, 2022.

7. Further, any discussion in OAG’s letter of accessory uses, or of the need for accessory uses to be located on the same lot as the principal use, is rendered irrelevant by the conclusion that the Athletic Facilities constitute a principal private school use.

8. The OAG letter also claims that due to the proposed intensity of use of the Athletics Facilities, those facilities should be deemed to be a commercial gymnasium which falls under the use category of Entertainment, Assembly and Performing Arts (EAPA). This is the use category that applies to such non-comparable venues as Nationals Park and the Capitol One Center. The Applicant finds this argument to be completely erroneous and an attempt to frighten the community (and the BZA) about commercial uses that are in no means proposed on the site.

Following an extraordinary process of ANC review and extensive additional engagement between the Applicant and neighbors, the ANC adopted detailed conditions that place strongly protective limits on the use of the property. These conditions – as discussed further below – have been accepted by Maret and incorporated into its Memorandum of Understanding (MOU) with ANC 3/4G. The concerns raised by OAG about the intensity of use of the property are entirely appropriate issues for the BZA to review as part of a special exception application, but those concerns do not change the necessary relief from a special exception to a use variance.

9. OAG is mistaken when it asserts that charging outside groups constitutes a forbidden commercial use. The proposed use of the Athletic Facilities is (a) consistent with private education use and (b) primarily for Maret to support its athletics program. The ability of private schools to lease facilities to third parties is well-established (*e.g.*, see BZA Orders No. 19599-A [Georgetown Day School], 16433 [National Cathedral School], and 16517 and 18465 [St. Patrick's Episcopal Day School]) and common throughout the District. In any case, the primary use of the Athletic Facilities will be by Maret, for Maret athletic teams practicing and playing games. This will be established and monitored by Condition No. 3 of the ANC Resolution (and MOU – discussed below) which states: “The athletic fields are to be used primarily by Maret to support its athletic programs, and any leased use of the fields to youth sports groups or for non-Maret summer camps shall not exceed the time of Maret’s use in any calendar year.”

10. The OAG letter also makes an attempt to apply some of the special exception impact standards for a private school use to this application based largely on incorrect and unsubstantiated assumptions that are clearly refuted in the record. Specifically, the OAG letter references intensity of use issues and noise impacts from the use of fields, and erroneously references the total Maret student population (rather than the anticipated 50-60 students, including students from Maret *and a* visiting school athletic team, that are expected to be using the Athletic Facilities at any one time). OAG’s letter further suggests that third parties would have use of the space “without limits”, even though such limits have clearly been established by the Applicant and are reflected in the ANC 3/4G conditions. The OAG letter also includes proposed conditions of BZA approval. In regard to OAG’s proposed conditions, the Applicant does not support those conditions, having already agreed to abide by the thorough, well-reasoned and fact-supported conditions that have been proposed by ANC 3/4G.

11. Finally, the OAG letter states that OAG is participating in this case because the proposed special exception review and approval of the Athletics Facilities “not only diminishes the public’s faith in the zoning process by confirming that the ‘game is rigged’ but strips the public of the procedural protections they would be entitled to if the Zoning Regulations were properly followed.” Both of these arguments are unfounded and incorrect. First, as noted above, the special exception process allows the public (including nearby property owners, community stakeholders, and the ANC) and the BZA to thoroughly review, analyze and determine whether the proposed Athletic Facilities will create objectionable impacts on adjoining and nearby properties and whether the proposed use is in harmony with the general purpose and intent of the Zoning Regulations. No procedural protections are stripped from the public by reviewing this

application as a special exception case. Quite to the contrary, members of the public have played an active and engaged role in the review of this application, as evidenced by the more than 200 statements in the record from persons in support and persons in opposition to the application.

The Applicant finds OAG's argument that they are participating in this case in order to make sure that the public feels the zoning process is "not rigged" to be perplexing, as the OAG's participation in this case raises serious issues and concerns. In testimony at the public hearing Counsel for the Friends of the Field noted that they initiated contact with OAG to participate in this case. In response to a question from the participating Zoning Commission Chair, ANC 3/4G Chair Speck noted that OAG did not reach out to the ANC to see if the ANC felt their participation was needed. In addition, the OAG did not reach out to Applicant's Counsel to raise their concerns with regard to the requested relief. Instead of taking a collaborative posture, OAG submitted a 6-page, single-spaced letter into the record on the eve of the public hearing. These actions by the OAG, choosing to participate in a Contested Case at the request of a Party Opponent and not the elected ANC (whose opinion is provided "great weight"), in a purely adversarial manner, do not appear to be actions that are taken "in the public interest". The truly negative precedent that may arise from this case is the manner in which OAG decided to participate in this case.

For all of the reasons given above, the Applicant respectfully asks the Board to rule that the requested special exception relief for a private school use is appropriate.

Information Regarding Maret's Relationship with Moseley Field

Attached to this post-hearing submission is a letter from Gerard Hall, Founder of DC Knights Youth Sports, former director of baseball operations for the Woodridge Warriors, and field maintenance coordinator of Taft Field. (See Exhibit C). This letter highlights the Maret School's contributions to the development of Taft Field (Dwight Moseley Field Complex) during the period from 1998-2004. This letter highlights the following contributions that were made by Maret to the Dwight Moseley Field Complex:

- Construction of a batting cage;
- Donation of two tractors;
- Guidance on proper use of field maintenance equipment;
- Provided professional grade infield diamond mix on an annual basis;
- Purchased a storage shed to house field maintenance and baseball related equipment; and
- Provided a financial contribution to build a playground for community youth, and the Maret baseball team helped construct the playground equipment.

Mr. Hall's letter concludes with the following statement: "We're indebted for their [Maret's] generosity in our time of need and forever grateful for their support. Although they ventured

into a new field partnership. They will always be welcomed and part of the Woodridge Warriors family and community.”³

Summary of the Concessions and Proposals Made to the Application in Response to Community Feedback

During testimony at the March 9, 2022 public hearing, Trey Holloway (Assistant Head: Finance & Operations of the Maret School) presented testimony and PowerPoint slides which depicted and described the proposals and changes that have been made to the application in response to community feedback. Those PowerPoint slides are attached as Exhibit D.

Updated Memorandum of Understanding (MOU) with ANC 3/4G

In response to the comments of Board Member Smith, the Applicant and ANC 3/4G have entered into a MOU which evidences the agreement of both the Applicant and ANC 3/4G to abide by the conditions that were included in ANC 3/4G's resolution in support of this application (Ex. 233). That MOU includes a new condition that Maret present an annual report to ANC 3/4G that provides details regarding the operations of the Athletics Facilities over the prior year and provides the public an opportunity to provide comment. Maret will provide these annual reports to ANC 3/4G for a period of ten years. On March 14, 2022, ANC 3/4G adopted a resolution to execute the MOU. A copy of the fully executed MOU is attached as Exhibit E.

Status of Discussions with the Owner of the Property Located at 5931 Utah Avenue, NW

Over the past several months, Maret's project team and representatives from ECC have been in frequent and ongoing discussions with Meredith Rathbone and Stephen Bocanegra, the residents of 5931 Utah Avenue, NW and have agreed to make numerous changes to the proposed Athletics Facilities to address their concerns. Ms. Rathbone and Mr. Bocanegra's home is adjacent to the existing Media Center Building, the smallest of the four buildings located on the ECC campus. The Media Center Building is included in the premises to be leased by Maret and will be accessible from the proposed baseball diamond and multi-purpose field.

In response to Chairman Hill's request for a status of the discussions with Ms. Rathbone and Mr. Bocanegra, a chronology of key correspondence between the parties is included in Exhibit F. The Applicant has agreed to the following measures to mitigate potential impacts associated with its proposed Athletic Facilities in response to concerns raised by Ms. Rathbone and Mr. Bocanegra:

³ This "good neighbor" policy of Maret is also reflected in the following letters of support already submitted in the record: Peter Hakim, Woodley Park neighbor (Ex. 122); Rittenhouse neighbors letter (Ex. 194); Mike DiMarco, Horizons Greater Washington (Ex. 123); and Carl Ehrlich, Flagstar Football (Ex. 232).

- Plant additional trees, hedges and bushes to prevent or otherwise discourage people from accessing and/or loitering in spaces near the Media Center Building – both between the Media Center Building and the property line of 5931 Utah Avenue, NW and between the Media Center Building and the multi-purpose field.
- Continue to work with Ms. Rathbone and Mr. Bocanegra and other neighbors and the ANC regarding the type, number, and maturity of the trees to be planted in connection with the project.
- Install a fence along the walkway between the ECC and the west side of the Media Center Building that wraps around the existing Media Center Building entrance vestibule and ends at the edge of the vestibule, limiting access to the lawn between the vestibule and the existing brick tunnel only to ECC students and staff and not to any field users.
- Replace the fence along the property line of 5931 Utah Avenue, NW, from the alley extending parallel to the Media Center Building to the point of the outer corner of the entrance vestibule, with a solid fence to enhance visual screening and noise mitigation.
- Install a fence 6' in height with a locked gate between the east side of the Media Center Building and the above-mentioned new solid fence along the 5931 Utah Avenue, NW property line to prevent unauthorized access to the space adjacent the Media Center Building that is near 5931 Utah Avenue, NW.
- Increase the height of the gate at the end of the Utah Avenue alley to 6' in height and ensure that it is locked when it is not in use by ECC or Maret for maintenance purposes or for emergency vehicles.
- Ensure that any security lights used on the property Maret is leasing from ECC will be low-glare and low-wattage so as to avoid light pollution at night.
- Provide access to the Media Center Building from the existing doors on the southwest (ECC-facing) side entrance vestibule and, subject to DC fire and safety codes, convert the existing doors on the west (Utah Avenue-facing) side of the entrance vestibule to emergency egress only.
- Explore the use of quiet-close doors.
- Relocate the dumpster from its originally-proposed location near the Utah Avenue alley to the parking lot.

There is only one remaining issue between Ms. Rathbone/Mr. Bocanegra and Maret. Maret proposes to continue to utilize an existing entrance into the Media Center Building and Ms. Rathbone and Mr. Bocanegra want that entrance to be closed and moved elsewhere. Maret believes that the actions noted above effectively and appropriately mitigate any objectionable impacts that the continued use of the Media Center Building will have on the Rathbone/Bocanegra property.

Conclusion

The Applicant has satisfied all of the relevant standards for special exception relief for the proposed Athletic Facilities and principal private school use. The Applicant looks forward to the Board's deliberations on this application at the March 30, 2022 Public Meeting.

Sincerely,

/s/
Paul Tummonds

Certificate of Service

The undersigned hereby certifies that copies of the Applicant's Post-Hearing Submission were delivered by electronic mail to the following addresses on March 16, 2022:

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